

E-filed 12/22/06

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

No. C-05-1247-JF

**STIPULATION AND [PROPOSED] ORDER RE:
DISMISSAL AND JANUARY 12, 2007 STATUS
CONFERENCE**

GUSTAVO HERRERA individually and
on behalf of others similarly situated, and
the general public,

Plaintiff,

vs.

SODEXHO, INC., a Delaware corporation,
and Does 1 through 10, inclusive,

Defendants.

STIPULATION AND ORDER RE: DISMISSAL
U.S.D.C., N.D. Cal., No. C-05-1247-JF

1 Additional counsel for plaintiff:

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STIPULATION AND ORDER RE: DISMISSAL
U.S.D.C., N.D. Cal., No. C-05-1247-JF

STIPULATION

Plaintiff Gustavo Herrera and defendant Sodexho, Inc., acting through their respective counsel of record, hereby stipulate as follows:

1. This action, *Herrera v. Sodexho, Inc.*, U.S.D.C., N.D. Cal., No. C-05-1247-JF (“*Herrera*”), and a related action, *Cevallos v. Sodexho, Inc.*, U.S.D.C., N.D. Cal., No. C-05-1671-JF (“*Cevallos*”), both are currently pending before this Court. A status conference in both actions is scheduled for Friday, January 12, 2007.

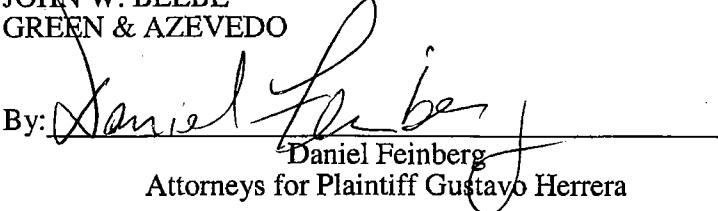
2. In December 2005, the parties settled both the *Herrera* and the *Cevallos* actions. In order to avoid disputes over this Court’s authority to approve the class action settlement (the parties disputed this Court’s subject matter jurisdiction), the parties requested that this Court delay further proceedings so that the plaintiffs in both actions could file a settlement action in Alameda County Superior Court, which they did (*Cevallos, et al., v. Sodexho, Inc.*, Case No. RG06268867 (the “State Court Action”).

3. On October 19, 2006, the Alameda County Superior Court granted final approval to the class action settlement in the State Court Action, thereby resolving all claims herein. A copy of the final approval order is attached as Exhibit A for the Court's reference.

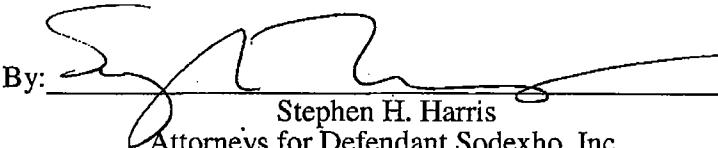
4. Pursuant to the settlement and Federal Rule of Civil Procedure 41(a)(1), the parties hereby stipulate by and through their designated counsel of record that the above-captioned action be and hereby is dismissed with prejudice, with each side to bear its own fees and costs.

5. The parties further believe there is good cause, and on that basis request, that the January 12, 2007 Status Conference be vacated.

1 Dated: December 21, 2006.

2 DANIEL FEINBERG
LEWIS, FEINBERG, RENAKER & JACKSON P.C.3 AARON KAUFMANN
4 DAVID POGREL
HINTON, ALFERT & SUMNER5 JOHN W. BEEBE
6 GREEN & AZEVEDO7 By: 
8 Daniel Feinberg
Attorneys for Plaintiff Gustavo Herrera

9 Dated: December 21, 2006.

10 JEFFREY D. WOHL
11 STEPHEN H. HARRIS
12 PAUL, HASTINGS, JANOFSKY & WALKER LLP13 By: 
14 Stephen H. Harris
15 Attorneys for Defendant Sodexho, Inc.

ORDER

Based on the parties' stipulation, and good cause appearing therefor,

IT IS ORDERED that this action is DISMISSED WITH PREJUDICE, with each party to bear its own fees and costs and the January 12, 2007, status conference be and hereby is VACATED.

Dated: December 22, 2006.

Jeremy Fogel
United States District Judge

EXHIBIT A

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ENDORSED
FILED
ALAMEDA COUNTY

NOV 21 2006

CLERK OF THE SUPERIOR COURT
By HOLLIE M. ADAMIC
Deputy

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7 Carolina Zavala, and Gustavo Herrera

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15 (additional counsel listed on second page)

16 Attorneys for Defendant Sodexho, Inc.

17 SUPERIOR COURT OF CALIFORNIA
18 COUNTY OF ALAMEDA

19 HERBERT CEVALLOS, JAVIER
20 CASTANEDA, CAROLINA ZAVALA,
21 AND GUSTAVO HERRERA on behalf of
22 themselves and all others similarly situated,

No. RG06268867

[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS SETTLEMENT

Date: October 19, 2006
Time: 2:00 p.m.
Dept.: 20
Judge: Hon. Robert B. Freedman

23 Plaintiffs,

24 vs.

25 SODEXHO, INC,

26 Defendant.

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1 On October 19, 2006, a hearing was held on the joint motion of plaintiffs Herbert
 2 Cevallos, Javier Castaneda, Carolina Zavala, and Gustavo Herrera, and defendant Sodexho, Inc.
 3 (“Sodexho”), for final approval of their class settlement and plaintiffs’ motion for attorneys’ fees,
 4 costs and class representative payments. Daniel M. Feinberg of Lewis, Feinberg, Renaker &
 5 Jackson, P.C.; Aaron Kaufmann of Hinton, Alfert & Sumner; John W. Beebe of Green &
 6 Azevedo; and Jerry Budin of the Law Office of Jerry Budin appeared for plaintiffs; and Jeffrey D.
 7 Wohl of Paul, Hastings, Janofsky & Walker LLP appeared for Sodexho.

8 The parties have submitted their Joint Stipulation of Class Action Settlement and Release
 9 (“Settlement Agreement”), which this Court preliminarily approved in its June 6, 2006, order.
 10 The June 6, 2006, order was subsequently modified on October 3, 2006, and October 19, 2006,
 11 based on the stipulation of the parties. In accordance with the preliminary approval order and
 12 subsequent orders modifying the preliminary approval order, class members have been given
 13 notice of the terms of the Settlement Agreement and the opportunity to object to it or to exclude
 14 themselves from its provisions. No class member has objected to the proposed settlement.
 15 Approximately 30 of the more than 11,000 class members initially filed elections not to
 16 participate in the settlement; subsequently, a number of them, with the stipulation of the parties as
 17 approved by the Court, were permitted to revoke their elections not to participate in the
 18 settlement.

19 Having received and considered the proposed Settlement Agreement, the supporting
 20 papers filed by the parties and plaintiffs, including the Declarations of Daniel Feinberg and the
 21 Settlement Administrator, and the evidence and argument received by the Court at the
 22 preliminary approval hearing held on June 6, 2006, and the final approval hearing on October 19,
 23 2006, the Court grants final approval to the Settlement Agreement, and HEREBY ORDERS and
 24 MAKES DETERMINATIONS as follows:

25 1. Pursuant to this Court’s orders of June 6, 2006, October 3, 2006, and October 19,
 26 2006, a Notice of Class Action Settlement and Opportunity to Opt Out or Object to Settlement
 27 was sent to each class member by first-class mail. This notice informed class members of the
 28 terms of the Settlement Agreement, their right to opt out of the class and Settlement Agreement

1 provisions and pursue their own remedies, their opportunity to file written objections, and their
2 right to appear in person or by counsel at the final approval hearing and be heard regarding
3 approval of the settlement. Adequate periods of time were provided by each of these procedures.
4 No class members filed written objections to the proposed settlement as part of this notice process
5 or stated an intent to appear at the final approval hearing.

6 2. The Court finds and determines that this notice procedure afforded adequate
7 protections to class members and provides the basis for the Court to make an informed decision
8 regarding approval of the settlement based on the responses of class members. The Court finds
9 and determines that the notice provided in this case was the best notice practicable, which
10 satisfied the requirements of law and due process.

11 3. For the reasons stated in the Court's June 6, 2006, preliminary approval order, the
12 Court finds and determines that the proposed Settlement Class, as defined in the "Definition of
13 'Class Member'" section of the Settlement Agreement, meets all of the legal requirements for
14 class certification, and it is hereby ordered that the Settlement Class is finally approved and
15 certified as a class for purposes of settlement of this action.

16 4. The Court finds that no class member has objected to the terms of the settlement.
17 The Court further finds and determines that the terms of the Settlement Agreement are fair,
18 reasonable and adequate to the class and to each class member and that the class members who
19 have not opted out shall be bound by the Settlement Agreement, that the Settlement Agreement is
20 ordered finally approved, and that all terms and provisions of the Settlement Agreement should be
21 and hereby are ordered to be consummated.

22 5. The Court finds and determines that the payments to be made to the Settlement
23 Class Members as provided for in the Settlement Agreement are fair and reasonable. The Court
24 hereby gives final approval to and orders the payment of those amounts be made to the Settlement
25 Class Members out of the \$1.9 million total settlement fund in accordance with the terms of the
26 Settlement Agreement.

27 6. The Court finds and determines that the payment of \$500,000 for attorneys' fees
28 and costs for Class Counsel Lewis, Feinberg, Renaker & Jackson; Hinton, Alfert & Sumner;

1 Green & Azevedo; and the Law Offices of Jerry Budin are fair and reasonable. The Court hereby
2 gives final approval to and orders that that payment of 90% of that amount be made to Class
3 Counsel out of the \$1.9 million total settlement fund pursuant to the terms of the Settlement
4 Agreement, with the remaining 10% (\$50,000) to be deposited in an interest-bearing account until
5 a written certification and final accounting is provided to the Court upon the completion of the
6 administration of the settlement.

7 7. The Court finds and determines that the payment of plaintiff participation awards
8 in the amount of \$10,000 each to plaintiffs Herbert Cevallos, Javier Castaneda, Carolina Zavala,
9 and Gustavo Herrera for their services as class representatives, in addition to their individual
10 distributions, is fair and reasonable. The Court hereby gives final approval to and orders that the
11 payment of those amounts be made to plaintiffs out of the \$1.9 million total settlement fund in
12 accordance with the terms of the Settlement Agreement.

13 8. The Court finds and determines that the payment of \$10,000 to the Labor and
14 Workforce Development Agency (“LWDA”) in settlement of the LWDA’s share of the penalties
15 alleged by plaintiffs and compromised under the Settlement Agreement is fair and reasonable.
16 The Court hereby gives final approval to and orders that the payment of that amount be made to
17 the LWDA out of the \$1.9 million total settlement fund in accordance with the terms of the
18 Settlement Agreement.

19 9. The Court finds and determines that the fees and expenses of administrating the
20 settlement, including those of the Settlement Administrator, Rust Consulting, Inc., are fair and
21 reasonable. The Court hereby gives final approval to and orders that the payment of those
22 amounts be paid out of the \$1.9 million total settlement fund in accordance with the terms of the
23 Settlement Agreement.

24 10. The Court retains jurisdiction of all matters relating to the interpretation,
25 administration, implementation, effectuation and enforcement of this Order and the Settlement
26 Agreement.

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1 11. Nothing in this order shall preclude any action to enforce the parties' obligations
2 under the Settlement Agreement or under this order, including the requirement that Sodexho
3 make payments to the class members in accordance with the terms of the Settlement Agreement.

4 12. Upon completion of administration of the settlement, the Settlement Administrator
5 shall provide written certification of such completion to the Superior Court and counsel for the
6 parties. Also upon completion of the administration of the settlement, Sodexho and Class
7 Counsel will each nominate for appointment by the Court a *cy pres* beneficiary to receive one-
8 half of any remaining settlement funds.

9 13. Pursuant to the settlement, all Settlement Class Members are permanently barred
10 from prosecuting against Sodexho and each of its past or present officers, directors, shareholders,
11 employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers
12 and reinsurers, and its and their respective successors and predecessors in interest, subsidiaries,
13 affiliates, parents and attorneys and each of their employee benefit plans, and all of their
14 respective officers, directors, employees, administrators, fiduciaries, trustees and agents, any
15 individual or class claims as set forth in the Settlement Agreement.

16 14. The parties are hereby ordered to comply with the terms of the Settlement
17 Agreement.

18 15. This action is hereby ordered dismissed with prejudice, provided that the Court
19 will conduct a compliance hearing with respect to the Settlement on April 12, 2007, at 9:00 a.m.
20 At that time, the Court may schedule one or more additional compliance hearings as it deems
21 appropriate.

22 Dated: November 21, 2006.

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25 Robert B. Freedman
26 Judge of the Superior Court
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